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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,314	09/05/2003	Marc. L. Vitantonio	26568/04006	8215
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CALFEE HALTER & GRISWOLD, LLP 800 SUPERIOR AVENUE SUITE 1400 CLEVELAND, OH 44114				
			EXAMINER BALSIS, SHAY L	
			ART UNIT 1744	PAPER NUMBER

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,314

Applicant(s)

VITANTONIO ET AL.

Examiner

Shay L Balsis

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/13/04, 2/2/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-17, 19, drawn to an apparatus, classified in class 15, subclass 104.94.
- II. Claim 18, drawn to method of manufacture, classified in class 300, subclass 21.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the apparatus does not require coating the substrate with a binder material and joining on at least sides.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Diana Dobrea on 11/8/04 a provisional election was made with traverse to prosecute the invention of group I, claims 1-17, 19. Affirmation of this election must be made by applicant in replying to this Office action. Claim 18 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of

Art Unit: 1744

inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10, 11 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites the limitation "the edges of a first half" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the edges of a second half" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the head of a tool" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "the interior edge of a seam" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4-11, 15 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Leland (USPN 3383158).

Leland teaches a toilet cleaner comprising a tool having a head (14, 56) and a handle section (12). There is a flushable swab (70) having a pocket-like configuration fitting over the head of the tool. The tool has a loading position wherein the swab is placed upon the tool, an operating position wherein the tool assists in holding the swab upon the tool and a removing position wherein the tool assists in displacing the swab from the tool. The head has two separable portions (14, 56) that are generally symmetrical halves. The portions are manipulated by a control rod (43) which extends from the head through a middle section of the tool into the handle section of the tool. The control rod is connected to a slidable button (36). The portions are manipulated by a cam and cam follower wherein the cam (54) is attached to the control rod and the cam follower (58) is attached to the head. The head may be manipulated into multiple configurations by a user wherein one of the configurations assists in holding the swab upon the head under a spring bias. Another configuration of the head assists in displacing the swab off the head while retaining the pocket configuration of the swab. The swab comprises a surfactant applied to the pad member.

Claims 1, 2, 4, 5, 7, 11, 15-17, 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Hart et al. (PGPub 2004/0093678).

Hart teaches a toilet cleaner comprising a tool having a head (40) and a handle section (39). Hart teaches a caddy for when the toilet cleaner is not in use. There is a flushable swab (43) having a pocket-like configuration fitting over the head of the tool. The tool has a loading position wherein the swab is placed upon the tool, an operating position wherein the tool assists in holding the swab upon the tool and a removing position wherein the tool assists in displacing the swab from the tool. The head has two separable portions (40a, 40b) that are generally symmetrical halves. The head may be manipulated into multiple configurations by a user wherein one of the configurations assists in holding the swab upon the

head under a spring bias. The swab comprises a surfactant applied to the pad member. The swab has four sides, wherein the pocket-like configuration is formed by substantially sealing at least two of the side surfaces. The swab is configured to have a shape similar to the profile of the head of the tool.

Claims 1-3, 11, 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Trenz et al. (USPN 6745427).

Trenz teaches a toilet cleaner comprising a tool having a head (not labeled see figure 4) and a handle section (5). There is a flushable swab (not labeled see figure 4) having a pocket-like configuration fitting over the head of the tool. The tool has a loading position wherein the swab is placed upon the tool, an operating position wherein the tool assists in holding the swab upon the tool and a removing position wherein the tool assists in displacing the swab from the tool. The tool further includes a caddy for holding the tool when not in use (figure 7). The swab is manufactured from non-paper material such as cellulose or a water-soluble plastic. The swab comprises a surfactant applied to the pad member.

Claims 1, 4, 5, 7, 10, 11, 16, 17, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Beck et al. (USPN 2816311).

Beck teaches a toilet cleaner comprising a tool having a head (40, 41) and a handle section (32, 37). There is a flushable swab (25) having a pocket-like configuration fitting over the head of the tool. The tool has a loading position wherein the swab is placed upon the tool, an operating position wherein the tool assists in holding the swab upon the tool and a removing position wherein the tool assists in displacing the swab from the tool. The head has two separable portions (40, 41) that are generally symmetrical halves. The head may be manipulated into multiple configurations by a user wherein one of the configurations assists in holding the swab upon the head under a spring bias. The swab comprises a surfactant applied to the pad member. The swab has four sides, wherein the pocket-like configuration is formed by substantially sealing at least two of the side surfaces. The swab is configured to have a shape similar to the profile of the head of the tool.

Claims 11, 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by James et al. (USPN 6305044).

James teaches a swab having a pocket-like configuration. The swab comprises a surfactant applied to the pad member. The swab has four sides, wherein the pocket-like configuration is formed by substantially sealing at least two of the side surfaces. The swab is configured to have a shape similar to the profile of the head of a tool that may be used.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leland (USPN 3383158) in view of Sayles et al. (USPN 6295688) or Beck et al. (USPN 2816311) in view of Sayles et al.

Leland or Beck teach all the essential elements of the claimed invention however fail to teach a caddy for the toilet cleaner. Sayles teaches a toilet cleaner comprising a caddy. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a caddy for the toilet cleaners of Leland and Beck so that when the toilet cleaners are not in use they could be stored away.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leland or Hart et al. or Beck et al.

Leland, Hart or Beck teach all the essential elements of the claimed invention however fail to teach that the swab is manufactured from a non-paper material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a non-paper material for the swab, since it has been held within the general skill of a worker in the art to select a know material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416.

Art Unit: 1744

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leland or Hart et al. or Trenz et al. or Beck et al.

Leland, Hart, Trenz or Beck disclose all the essential elements of the claimed invention however, the references fail to teach that the swab is trapezoidal in shape. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to make the swab trapezoidal because Applicant has not disclosed that a trapezoidal swab provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the shapes as taught by Leland, Hart, Trenz or Beck or the claimed trapezoidal shape because all the swabs perform the same function of cleaning toilets effectively equally well. Therefore, it would have been obvious to one of ordinary skill in the art to modify Leland, Hart, Trenz or Beck to obtain the invention as specified in claim 12.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leland or Hart et al. or Trenz et al. or Beck et al.

Leland, Hart, Trenz or Beck teach all the essential elements of the claimed invention however fail to teach that the swab is made from a blend of 75% cotton by weight and 25% rayon by weight. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use blend of 75% cotton by weight and 25% rayon by weight, since it has been held within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leland in view of Hansen et al. (USPN 5672418) or Hart et al. in view of Hansen et al. (USPN 5672418) or Trenz et al. in view of Hansen et al. (USPN 5672418) or Beck et al. in view of Hansen et al. (USPN 5672418).

Leland, Hart, Trenz or Beck teach all the essential elements of the claimed invention however fail to teach a binder of polyvinyl acetate applied to the pad member. Hansen teaches applying a polyvinyl

acetate binder to fibers. It would have been obvious to apply a polyvinyl acetate binder to the pad member of Leland, Hart, Trenz or Beck to assist in adhering the fibers in the pad member together and also to help adhere a surfactant, scent or dye to the pad member.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L Balsis whose telephone number is 571-272-1268. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Slb
11/9/04


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